

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9358 OF 2005

Kantkappa Kukar Malpe ... Petitioner

V/s

Pushpa Rani Ramchandra Kamat & ors. ... Respondents

Mr. S.A. Sawant for the petitioner.

Mr. S.A. Mudbidri for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 3RD APRIL, 2006

P.C.:

1. Heard both sides.

2. The petitioner challenged the order passed by the lower appellate Court dated 29.10.2005 dismissing the appeal and confirming the order passed by the Trial Court in Obstructionist notice No. 44 of 2002 in R.A.E. & R. Suit No. 1548/5126 of 1981.

The Trial Court had held that the petitioner obstructionist No.1 had no right, title and interest in the suit property, which order came to be confirmed by

the lower appellate Court.

2. As the matter stands today, the decree is executed and the possession is handed over to the landlord. While doing so, the Bailiff's report shows that some movable articles were involved in the property. It is the case of the petitioner that all those belongings are owned by him and, therefore, he seeks possession of the said articles. In that regard, this Court had passed certain order dated 21.2.2006 directing that the articles should be handed over to the petitioner by the respondent on 22.2.2006 and thereafter report should be made to this Court regarding compliance of this order.

3. Today the statement is made on behalf of the respondent that while compliance was being made, it was found that some third person claimed ownership of the said property and, therefore, order of this order could not be complied with.

4. Under the circumstances, it would be proper to issue certain directions to the Execution Court in this regard so as to dispose of this matter.

The Execution Court is hereby directed to appoint the

Court Commissioner in order to ascertain the ownership and right of possession over the movable property which was found in the suit premises of which possession was handed over on 1.2.2006 as per the Bailiff's report which is brought to my notice. The Execution Court is further directed to take immediate steps so as to ascertain ownership and possessor title of the said movable property on considering the Commissioner's report and then pass appropriate orders regarding disposal of the said movable property found in the premises.

The Execution Court shall take necessary steps on or before 17.4.2006 in order to comply with the order of this Court. While doing so, the Execution Court shall also take into account the interim order passed by this Court dated 21.2.2006 in this writ petition.

The parties are directed to appear before the Execution Court on 10.4.2006.

5. Since nothing more remains in this petition, the petition also stands disposed of with these directions. No order as to costs.

Parties to act on the authenticated copy of this order.

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